

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE M.F. SALDANHA

W.P. 10334/1996

BETWEEN

1. P.G. Abraham Tharakan,  
major
2. Rosekutty George,  
major

both r/at. Savirabatti Estate,  
Devarapura - 571 213,  
Virajpet Taluk  
Kodagu Dist.,  
by their P.A. Holder  
P.G. Antoni Tharakan,  
major.

PETITIONERS

(By Sri A.K. Subbaiah, Adv.)

AND

1. The Asst. Commissioner  
Hunsur Division, Hunsur,  
Mysore Dist.


2. The State of Karnataka  
by its Secretary,  
Dept. of Revenue  
M.S. Building,  
Dr. Ambedkar Veedhi  
Bangalore

RESPONDENTS

(By Smt. M.R. Shanthakumari, HCGP)

-----  
Memorandum of W.P. is filed under Arts. 226 &  
227 of the Constitution praying that this Court  
be pleased to quash Annex.D dt. 4.3.96 etc.

Writ petition coming on for hearing this day,  
the Court made the following ORDER..



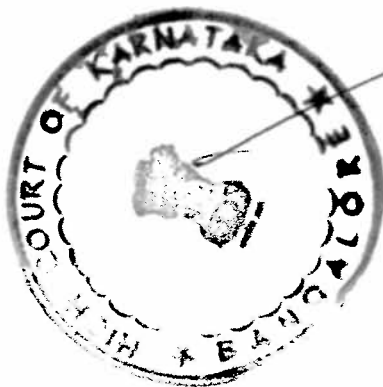
ORDER

I have heard the petitioners' learned advocate and the learned Govt. Advocate. The short point that is urged on behalf of the petrs. is that the order of forfeiture is legally unjustified. The petitioners' learned advocate submits and with considerable justification that if the Court peruses the schemes of Sections 84 to 87 of the Act it would be seen that even in the case of uncultivated lands, the authority is entitled to call upon the land holder to cultivate the land and if this requisition is not complied with, after one year the authority is entitled to give the land on lease for a period of five years even though S.87 prescribes that the possession will have to be restored to the person who is entitled to it and there is no provision in this chapter which justifies the order of forfeiture. The learned Govt. Advocate submitted that notice had been served and that only after the notices were served the proceedings were instituted. Again, Mr.Subbaiah points out that the notice served was a show cause notice calling upon the petitioner as to why the land shall not be

*S*

forfeited and that this notice itself was unjustified.

2. After perusing the record and hearing learned advocates on both sides, I am satisfied that there is a gross error in the order of forfeiture in so far as it was unjustified and furthermore, that the procedure followed was in breach of the legal requirements. The impugned order is accordingly quashed and set aside. If the law so permits and if the facts justify, the authorities concerned are not prevented from instituting any ~~other~~ steps according to law but that they shall ensure that this is done with due notice to the petitioners. The petition accordingly succeeds. No order as to costs.



Sd/-  
JUDGE

GS/-